47 CFR 61.48 Transition rules for price cap formula calculations.

(a)-(h) [reserved]

(i) Transport and Special Access Density Pricing Zone Transition Rules.

(1) Definitions. The following definitions apply for purposes of paragraph (i) of this section:

Earlier date is the earlier of the special access zone date and the transport zone date.

Earlier service is special access if the special access zone date precedes the transport zone date, and is transport if the transport zone date precedes the special access zone date.

Later date is the later of the special access zone date and the transport zone date.

Later service is transport if the special access zone date precedes the transport zone date, and is special access if the transport zone date precedes the special access zone date.

Revenue weight of a given group of services included in a zone category is the ratio of base period demand for the given service rate elements included in the category priced at existing rates, to the base period demand for the entire group of rate elements comprising the category priced at existing rates.

Special access zone date is the date on which a local exchange carrier tariff establishing divergent special access rates in different zones, as described in § 69.123(c) of this chapter, becomes effective.

Transport zone date is the date on which a local exchange carrier tariff establishing divergent switched transport rates in different zones, as described in § 69.123(d) of this chapter, becomes effective.

(2) Simultaneous Introduction of Special Access and Transport Zones. Local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on the same date, shall initially establish density pricing zone SBIs and bands pursuant to the methodology in § 61.47(e-f).

(3) Sequential Introduction of Zones in the Same Tariff Year. Notwithstanding § 61.47(e-f), local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on different dates during the same tariff year, shall, on the earlier date, establish density pricing zone SBIs and pricing bands using the methodology described in § 61.47(e-f), but applicable to the earlier service only. On

the later date, such carriers shall recalculate the SBIs and pricing bands to limit the pricing flexibility of the services included in each density pricing zone category, as reflected in its SBI, as follows:

(i.) The upper pricing band shall be a weighted average of the following:

(A) The upper pricing band that applied to the earlier services included in the zone category on the day preceding the later date, weighted by the revenue weight of the earlier services included in the zone category; and

(B) 1.05 times the SBI value for the services included in the zone category on the day preceding the later date, weighted by the revenue weight of the later services included in the zone category.

(ii.) [reserved]

(iii.) On the later date, the SBI value for the zone category shall be equal to the SBI value for the category on the day preceding the later date.

(4) Introduction of Zones in Different Tariff Years. Notwithstanding § 61.47(e-f), those local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date do not occur within the same tariff year, shall, on the earlier date, establish density pricing zone SBIs and pricing bands using the methodology described in § 61.47(e-f), but applicable to the earlier service only.

(i.) On the later date, such carriers shall use the methodology set forth in paragraphs (a) through (d) of § 61.47 to calculate separate SBIs in each zone for each of the following groups of services:

(A) DS1 special access services;

(B) DS3 special access services;

(C) DS1 entrance facilities, DS1 direct-trunked transport, and DS1 dedicated signalling transport;

(D) DS3 entrance facilities, DS3 direct-trunked transport, and DS3 dedicated signalling transport;

(E) Voice grade entrance facilities, voice grade direct-trunked transport, and voice grade dedicated signalling transport;

(F) Tandem-switched transport; and ,

(G) Such other special access services as the Commission may designate by order.

(ii.) From the later date through the end of the following tariff year, the annual pricing flexibility for each of the subindexes specified in paragraph (i)(4)(i) of this section shall be limited to an annual increase of five percent or an annual decrease of fifteen percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the tariff year preceding the tariff year in which the later date occurs.

(iii.) On the first day of the second tariff year following the tariff year during which the later date occurs, the local exchange carriers to which this paragraph applies shall establish the separate subindexes provided in § 61.47(e), and shall set the initial SBIs for those density pricing zone categories that are combined (specified in paragraphs (i)(4)(i)(A) and (i)(4)(i)(C), (i)(4)(i)(B) and (i)(4)(i)(D), and (i)(4)(i)(E) and (i)(4)(i)(G) of this section) by computing the weighted averages of the SBIs that applied to the formerly separate zone categories, weighted by the revenue weights of the respective services included in the zone categories.

(j) [removed and reserved]

(k) [removed and reserved]

(l) AverageTraffic Sensitive Revenues.

(1) In the July 1, 2000 annual filing, price cap LECs will make an additional reduction to rates comprising ATS Charge, and to associated SBI upper limits and PCIs. This reduction will be calculated to be the amount that would be necessary, when calculated as if all price cap LECs elect to be price cap LECs, to achieve a total $2.1 billion reduction in carrier common line and ATS rates by all price cap LECs, compared with those rates as they existed on June 30, 2000 using 2000 annual filing base period demand.

(i.) The net change in revenue associated with Carrier Common Line rate elements resulting from:

(A) the removal from access of ILEC contributions to the Federal universal service mechanisms;

(B) ILEC receipts of Interstate Access USF pursuant to Subpart I of Part 54;

(C) Changes in End User Common Line Charges and PICC rates;

(D) Changes in Carrier Common Line charges due to GDPPI-X targeting for $0.0095 filing entities.

(ii.)Reductions in Average Traffic Sensitive charges resulting from:

(A) Targeting of the application of the (GDPPI-X) portion of the formula in § 61.45(b), and any applicable "g" adjustments;

(B) The removal from access of ILEC contributions to the Federal universal service mechanisms;

(C) Additional ATS charge reductions defined in subparagraph (2) below.

(2) Once the reductions in paragraph (i) and subparagraphs (ii)(A)-(B) are identified, the difference between those reductions and $2.1 billion is the total amount of additional reductions that would be made to ATS rates of price cap LECs if all price cap LECs were price cap LECs. This amount will then be restated as the percentage of total price cap LEC Local Switching revenues as of June 30, 2000 using 2000 annual filing base period demand ("June 30 Local Switching revenues") necessary to yield the total amount of additional reductions and taking into account the fact that, if participating, a price cap LEC would not reduce ATS rates below its Target Rate as set forth in § 61.3(qq). Each price cap LEC then reduces ATS rate elements, and associated SBI upper limits and PCIs, by a dollar amount equivalent to the percentage times the June 30 Local Switching revenues for that filing entity, provided that no price cap LEC shall be required to reduce its ATS rates below its Target Rate as set forth in § 61.3(qq). Each carrier can take its additional reductions against any of the ATS rate elements, provided that at least a proportional share must be taken against Local Switching rates.

(m) Local Switching Pooled Revenues.

(1) Price cap local exchange carriers are permitted to pool local switching revenues in their common line basket under one of the following conditions.

(i) Any price cap local exchange carrier that would otherwise have July 1, 2000 price cap reductions as a percentage of Base Period Price Cap Revenues at the holding company level greater than the industry wide total July 1, 2000 price cap revenue reduction as a percentage of Base Period Price Cap Revenues may elect temporarily to pool the amount of the additional reductions above 25% of the Local Switching element

revenues necessary to yield that carrier's proportionate share of a total $2.1 billion reduction in switched access usage rates on July 1, 2000. The basis of the reduction calculation will be R at $PCI_{(t-1)}$ for the upcoming tariff year. The percentage reductions per line amounts will be calculated as follows:

(Total Price Cap Revenue Reduction / Base Period Price Cap Revenues)

Pooled local switching revenue for each filing entity within a holding company that qualifies under this subparagraph (i) will continue until such pooled revenues are eliminated under this subparagraph. Not withstanding the provisions of section 61.45(b)(1), once the Average Traffic Sensitive (ATS) rate reaches the applicable Target Rate as set forth in § 61.3(qq), the dollar impact of PCI reductions associated with the CMT, traffic sensitive, and trunking baskets' X-factor of 6.5% shall be targeted to reducing pooled local switching revenue until the pooled local switching revenue is eliminated. Thereafter, the X-factor for these baskets will be determined in accordance with § 61.45(b)(1).

(ii) Price cap local exchange carriers other than the Bell companies and GTE with at least 20% of total holding company lines operated by companies that as of December 31, 1999 were certified to the Commission as rural carriers, may elect to pool up to the following amounts:

(A) for a price cap holding company's predominantly non-rural filing entities (*i.e.* filing entities within which more than 50% of all lines are operated by telephone companies other than those that as of December 31, 1999 were certified to the Commission as rural telephone companies), the amount of the additional reductions to Average Traffic Sensitive Charge rates as defined in § 61.48(l)(2), to the extent such reductions exceed 25% of the Local Switching element revenues (measured in terms of June 30, 2000 rates times 1999 base period demand);

(B) for a price cap holding company's predominantly rural filing entities (i.e. filing entities with greater than 50% of lines operated by telephone companies that as of December 31, 1999 were certified to the Commission as rural telephone companies), the amount of the additional reductions to Average Traffic Sensitive Charge rates as defined in § 61.48(l)(2).

(2) Allocation of Pooled Local Switching Revenue to Certain Common Line Elements

(i) The pooled local switching revenue for each filing entity is shifted to the common line basket within price caps. Pooled local switching revenue will not be included in calculations to determine the eligibility for interstate access universal service support.

(ii) Pooled local switching revenue will be capped on a revenue per line basis.

(iii) Pooled local switching revenue is included in the total revenue for the common line basket in calculating the X-factor reduction targeted to the traffic sensitive rate elements, and for companies qualified under § 61.48 (m)(1)(i), to pooled elements after the Average Traffic Sensitive Charge reaches the target level. For the purpose of targeting X-factor reductions, companies that allocate pooled local switching revenue to other filing entities pursuant to § 61.48(m)(2)(vii) shall include pooled local switching revenue in the total revenue of the common line basket of the filing entity from which the pooled local switching revenue originated.

(iv) Pooled local switching revenue shall be kept separate from CMT revenue in the CMT basket. CMT rate elements for each filing entity shall first be set based on CMT revenue per line without regard to the presence of pooled local switching revenue for each filing entity.

(v) If the rates generated without regard to the presence of pooled local switching revenue for multi-line business (MLB) PICC and/or MLB SLC are below the nominal caps of $4.31 and $9.20, respectively, pooled amounts can be added to these rate elements to the extent permitted by the nominal caps.

(vi) Notwithstanding the provisions of § 69.152(k), pooled local switching revenue is first added to the MLB SLC until the rate equals the nominal cap ($9.20) or the pooled local switching revenue is fully allocated. If pooled local switching revenue remains after applying amounts to the MLB SLC, notwithstanding the provisions of § 69.153, the remaining pooled local switching revenue may be added to the MLB PICC until the rate equals the nominal cap ($4.31) or the pooled local switching revenue is fully allocated. Unallocated pooled local switching revenue may still remain. For companies pooling pursuant to § 61.48(m)(1)(i), these unallocated amounts may not be recovered from the CCL charge, the primary residential and single-line business SLC, a non-primary residential SLC, or from CMT elements in any other filing entity.

(vii) For companies pooling pursuant to § 61.48(m)(1)(ii), pooled local switching revenue that can not be allocated to the MLB PICC and MLB SLC rates within an individual filing entity may not be recovered from the CCL charge, primary residential and single-line business SLC or residential/single line business SLC charges, but may be allocated to other filing entities within the holding company, and collected by adding these amounts to the MLB PICC and MLB SLC rates. The allocation of pooled local switching revenue among filing entities will be re-calculated at each annual filing. In subsequent annual filings, pooled local switching revenue that was allocated to another filing entity will be reallocated to the filing entity from where it originated, to the full extent permitted by the nominal caps of $9.20 and $4.31.

(viii) Notwithstanding the provisions of §69.152(k), these unallocated local

switching revenues that cannot be recovered fully pursuant to (vii) are first added to the MLB SLC of other filing entities until the resulting rate equals the nominal cap ($9.20) or the pooled local switching revenue for the holding company is fully allocated. If the pooled local switching revenue can be fully allocated to the MLB SLC, the amount is distributed to each filing entity with a rate below the nominal cap ($9.20) based on its below-cap MLB SLC revenue as a percentage of the total holding company's below-cap MLB SLC revenue.

(ix) If pooled local switching revenue remains after applying amounts to the MLB SLC of all filing entities in the holding company, pooled local switching revenue may be added to the MLB PICC of other filing entities. Notwithstanding the provisions of § 69.153, the remaining pooled local switching revenue is distributed to each filing entity with a rate below the nominal cap ($4.31) based on its below-cap MLB PICC revenue as a percentage of the total holding company's below-cap MLB PICC revenue.

(x) If pooled local switching is added to the MLB SLC but not to the MLB PICC for a filing entity that qualified to de-average SLCs without regard to pooled local switching, the resulting SLC rates can still be de-averaged. Total pooled local switching is added to the de-averaged zone 1 MLB SLC rate until the per line rate in zone 1 equals the rate in zone 2 or until the pooled local switching is fully allocated to the de-averaged MLB SLC rate for zone 1. If pooled local switching revenue remains after the rate in zone 1 equals zone 2, the de-averaged rates of zone 1 and zone 2 are increased until the pooled local switching is fully allocated to the de-averaged MLB SLC rates of zone 1 and 2 or until those rates reaches zone 3 MLB SLC rate level. This process continues until pooled local switching revenue is fully allocated to the zone de-averaged rates.

(n) Establishment of the special access basket, effective July 1, 2000.

(1) On the effective date, the PCI value for the special access basket, as defined in § 61.42(d)(5) shall be equal to the PCI for the trunking basket on the day preceding the establishment of the special access basket.

(2) On the effective date, the API value for the special access basket, as defined in § 61.42(d)(5) shall be equal to the API for the trunking basket on the day preceding the establishment of the special access basket.

(3) Service Category, Subcategory, and Density Zone SBIs and Upper Limits

(i) Interconnection, Tandem Switched Transport, and Signalling Interconnection will retain the SBIs and upper limits and remain in the trunking basket.

(ii) Audio/Video and Wideband will retain the SBIs and upper limits and be moved into the Special Access basket.

(iii) For Voice Grade, the SBIs and upper limits in both baskets will be equal to the SBIs and upper limits in the existing trunking basket on the day preceding the establishment of the special access basket. Voice Grade density zones in the trunking basket will retain their indices and upper limits. Voice Grade density zones will be initialized in the special access basket when services are first offered in them.

(iv) For High Cap/DDS, DS1, and DS3 category and subcategories, the SBIs and upper limits in both baskets will be equal to the SBIs and upper limits in the existing trunking basket on the day preceding the establishment of the Special Access basket. SBIs and upper limits for services that are in both combined density zones and either DTT/EF or Special density zones will be calculated by using weighted averages of the indices in the affected zones.

(v) For each DTT/EF-related zone remaining in the trunking basket, the values will be calculated by taking the sum of the products of the DTT/EF revenues times the DTT/EF index (or upper limit) and the DTT/EF-related revenues in the combined zone times the combined index (or upper limit), and dividing by the total DTT/EF-related revenues for that zone.

(vi) For each Special-related zone remaining in the trunking basket, the values will be calculated by taking the sum of the products of the Special revenues times the Special index (or upper limit) and the Special-related revenues in the combined zone times the combined index (or upper limit), and dividing by the total Special-related revenues for that zone.

(o) Treatment of acquisitions of exchanges with different ATS Target Rates as set forth in 61.3(qq):

(1) In the event of that a price cap LEC acquires a filing entity or portion thereof from a price cap LEC after July 1, 2000, and the price cap LEC did not have a binding and executed contract to purchase that filing entity or portion thereof as of April 1, 2000, those properties retain their pre-existing Target Rates as set forth in § 61.3(qq). If those properties are merged into a filing entity with a different Target Rate as set forth in § 61.3(qq), the Target Rate as set forth in § 61.3(qq) for the merged filing entity will be the weighted average of the Target Rates as set forth in § 61.3(qq) for the properties being combined into a single filing entity, with the average weighted by local switching minutes. When a property acquired as a result of a contract for purchase executed after April 1, 2000 is merged with $0.0095 Target Rate properties, the obligation to apply price-cap reductions to reduce CCL, pursuant to § 61.45(b)(iii) does not apply to the properties purchased under contracts executed after April 1, 2000, but continues to apply to the other properties.

(2) For sale of properties for which a holding company was, as of April 1, 2000, under a binding and executed contract to purchase but which close after June 30, 2000, but during tariff year 2000, and that are subject to the $0.0095 Target Rate as set forth in 61.3(qq), the Average Traffic Sensitive Rate charged by the purchaser for that property will be the greater of $0.0095 or the Average Traffic Sensitive Rate for that property.

PART 69 – ACCESS CHARGES

SEC. 69.4 CHARGES TO BE FILED

(d) Recovery of Contributions to the Universal Service Support Mechanisms by Incumbent Local Exchange Carriers.

(1) Incumbent local exchange carriers other than price cap LECs (as defined in § 54.802(c)) may recover their contributions to the universal service support mechanisms through carriers' carrier charges.

(i) Price cap local exchange carriers may recover their contributions to the universal service mechanism by exogenously adjusting the price cap indices of each basket on the basis of relative end-user revenues.

(ii) Non-price cap local exchange carriers may recover their contributions to the universal service mechanism by applying a factor to their carrier common line charge revenue requirements.

(2)(i) In lieu of the carriers' carrier charges described in paragraph (d)(1), price cap local exchange carriers may recover their contributions to the universal service support mechanisms through explicit, interstate, end-user charges that are equitable and nondiscriminatory.

(ii) To the extent that price cap local exchange carriers choose to implement explicit, interstate, end-user charges to recover their contributions to the universal service support mechanisms, they must make corresponding reductions in their access charges to avoid any double recovery.

Sec. 69.115 Special access surcharges.

(a) Pending the development of techniques to accurately measure usage of exchange facilities that are interconnected by users with means of interstate or foreign telecommunications, a surcharge that is expressed in dollars and cents per line termination per month shall be assessed upon users that subscribe to private line services or WATS services that are not exempt from assessment pursuant to paragraph (e) of this section.

(b) Such surcharge shall be computed to reflect a reasonable approximation of the carrier usage charges which, assuming non-premium interconnection, would have been paid for by average interstate or foreign usage of common lines, end office facilities, and transport facilities, attributable to each Special Access line termination which is not exempt from assessment pursuant to paragraph (e) of this section.

(c) If the association, carrier or carriers that file the tariff are unable to estimate such average usage for a period ending May 31, 1985, the surcharge for such period shall be twenty-five dollars ($25) per line termination per month. As of June 30, 2000, these rates will remain and

be capped at the current levels until June 30, 2005.

(d) A telephone company may propose reasonable and nondiscriminatory end user surcharges, to be filed in its federal access tariffs and to be applied to the use of exchange facilities which are interconnected by users with means of interstate or foreign telecommunication which are not provided by the telephone company, and which are not exempt from assessment pursuant to paragraph (e) of this section. Telephone companies which wish to avail themselves of this option must undertake to use reasonable efforts to identify such means of interstate or foreign telecommunication, and to assess end user surcharges in a reasonable and nondiscriminatory manner.

(e) No special access surcharges shall be assessed for any of the following terminations:
(1) The open end termination in a telephone company switch of an FX line, including CCSA and CCSA-equivalent ONALs;
(2) Any termination of an analog channel that is used for radio or television program transmission;
(3) Any termination of a line that is used for telex service;
(4) Any termination of a line that by nature of its operating characteristics could not make use of common lines;
(5) Any termination of a line that is subject to carrier usage charges pursuant to Sec. 69.5; and
(6) Any termination of a line that the customer certifies to the exchange carrier is not connected to a PBX or other device capable of interconnecting a local exchange subscriber line with the private line or WATS access line.

§ 69.152 End user common line for price cap local exchange carriers.

[PUBLISHER'S NOTE: Paragraph (h) was added at 64 FR 16353, 16358, Apr. 5, 1999, effective July 1, 1999.]

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

(b) [Removed and reserved]

(c) The charge for each subscriber line associated with a public telephone shall be equal to the monthly charge computed in accordance with paragraph (k) of this section.

(d)(1) Beginning July 1, 2000, in a study area that does not have deaveraged End User Common Line Charges, the maximum monthly charge for each primary residential or single line business local exchange service subscriber line shall be the lesser of (i) the Average Price Cap CMT Revenue Per Line as defined in § 61.3(d) or (ii):

(A) On July 1, 2000, $4.35.

(B) On July 1, 2001, $5.00.

(C) On July 1, 2002, $6.00.

(D) On July 1, 2003, $6.50.

(2) In the event that GDP-PI exceeds 6.5% or is less than 0%, the maximum monthly charge in subsection (d)(1)(ii) and the cap will be adjusted pursuant to § 61.45(b)(1)(iii).

(e)(1) Beginning July 1, 2000, in an study area that does not have deaveraged End User Common Line Charges, the monthly charge for each non-primary residential local exchange service subscriber line shall be the lesser of:

(i) $7.00, or

(ii) the greater of:

(A) The rate as of June 30, 2000 less reductions needed to ensure over recovery of CMT Revenues does not occur, or

(B) Average Price Cap CMT Revenue Per Line.

(2) In the event that GDP-PI is greater than 6.5% or is less than 0%, the maximum monthly charge in subsection (e)(1)(i) and the cap will be adjusted pursuant to § 61.45(b)(1)(iii).

(3) Where the local exchange carrier provides a residential line to another carrier so that the other carrier may resell that residential line to a residence that already receives a primary residential line, the local exchange carrier may collect the non-primary residential charge described in paragraph (e) of this section from the other carrier.

(f) The charge for each primary residential local exchange service subscriber line shall be the same as the charge for each single line business local exchange service subscriber line.

(g) A line shall be deemed to be a residential subscriber line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff.

(h) [Effective July 1, 1999.] Only one of the residential subscriber lines a price cap LEC provides to a location shall be deemed to be a primary residential line.

(1) [Effective July 1, 1999.] For purposes of § 69.152(h), "residential subscriber line" includes residential lines that a price cap LEC provides to a competitive LEC that resells the line and on which the price cap LEC may assess access charges.

(2) [Effective July 1, 1999.] If a customer subscribes to residential lines from a price cap LEC and at least one reseller of the price cap LEC's lines, the line sold by the price cap LEC shall be the primary line, except that if a resold price cap LEC line is already the primary line, the resold line will remain the primary line should a price cap LEC subsequently sell an additional line to that residence.

(i) A line shall be deemed to be a single line business subscriber line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company.

(j) No charge shall be assessed for any WATS access line.

(k)(1) Beginning on July 1, 2000, for any study area that does not have deaveraged End User Common Line charges and in the absence of voluntary reductions, the maximum monthly End User Common Line Charge for multi-line business lines will be the lesser of:

(i) $9.20, or

(ii) the greater of:

(A) the rate as of June 30, 2000, less reductions needed to ensure over recovery of CMT Revenues does not occur, or

(B) Average Price Cap CMT Per Line as defined in § 61.3(d).

Except when the incumbent LEC reduces the rate through voluntary reductions, the multi-line business End User Common Line charge will be frozen until the study area's multi-line business PICC and CCL charge are eliminated.

(2) In the event that GDP-PI is greater than 6.5% or is less than 0%, the maximum monthly charge in subsection (k)(1)(i) and the cap will be adjusted pursuant to § 61.45(b)(1)(iii).

(l)(1) Beginning January 1, 1998, local exchange carriers shall assess no more than one End User Common Line charge as calculated under the applicable method under paragraph (e) of this section for Basic Rate Interface integrated services digital network (ISDN) service.

(2) Local exchange carriers shall assess no more than five End User Common Line charges as calculated under paragraph (k) of this section for Primary Rate Interface ISDN service.

(m) In the event the local exchange carrier charges less than the maximum End User Common Line charge for any subscriber lines, the local exchange carrier may not recover the difference between the amount collected and the maximum from carrier common line charges or PICCs.

(n) – (p) [Removed and Reserved]

(q) End User Common Line Charge De-Averaging. Beginning on July 1, 2000, ILECs may geographically deaverage End User Common Line charges subject to the following conditions:

(1) In order for an ILEC to be allowed to de-average End User Common Line charges within a study area, the ILEC must have state Commission approved geographically deaveraged rates for UNE loops within that study area. Except where an incumbent LEC geographically deaverages through voluntary reductions, before an ILEC may geographically deaverage its End User Common Line rates, its Originating and

Terminating CCL and Multi-line Business PICC rates in that study area must equal $0.00.

(2) All geographic deaveraging of End User Common Line charges by customer class within a study area must be according to the state commission-approved UNE loop zone. Solely for the purposes of determining interstate subscriber line charges and the interstate access universal service support described in § 54.806 and § 54.807, an ILEC may not have more than four geographic End User Common Line Charge/USF zones absent a review by the Commission. Where an ILEC has more than four state-created UNE zones and the Commission has not approved use of additional zones, the ILEC will determine, at its discretion, which state-created UNE zones to consolidate so that it has no more than four zones for the purpose of determining interstate subscriber line charges and interstate access universal service support.

(3) Within a given zone, Multi-line Business End User Common Line rates cannot fall below Primary Residential and Single Line Business or Non-Primary Residential End User Common Line charges. Non Primary End User Common Line charges cannot fall below Primary Residential and Single Line Business charges.

(4) For any given class of customer in any given zone, the Zone de-averaged End User Common Line Charge in that zone must be greater than or equal to the Zone de-averaged End User Common Line charge in the zone with the next lower Zone Average Revenue Per Line.

(5) The sum of all revenues per month that would be generated from all deaveraged End User Common Line charges in all zones within a study area plus Interstate Access USF Support Per Line (as defined in § 54.807) for the applicable customer classes and zones receiving such support multiplied by corresponding base period lines, divided by the number of base period lines in that study area cannot exceed Average Price Cap CMT Revenue Per Line as defined in § 61.3(d) for that study area. In addition, the sum of revenues per month that would be generated from all deaveraged End User Common Line charges in all End User Common Line charge deaveraging zones within a study area plus revenues per month from all End User Common Line charge, multi-line business PICC and CCL charges from study areas within that study area that have not geographically deaveraged End User Common Line charges plus the sum of all Interstate Access USF Support Per Line (as defined in § 54.807) for the applicable customer classes and zones receiving such support, multiplied by the corresponding base period lines for the applicable customer classes and zones within the study area, divided by the number of total base period lines in the study area cannot exceed Average Price Cap CMT Revenue Per Line as defined in § 61.3(d) for the study area.

(6) Maximum Charge. The maximum zone deaveraged End User Common Line Charge that may be charged in any zone is the applicable cap specified in § 69.152(d)(1), § 69.152(e)(1)(i) or § 69.152 (k)(1)(i) Zone Average Revenue Per Line is the Price Cap CMT Revenue Per Line allocated to a particular state-defined zone

used for deaveraging of UNE loop prices. The zone average revenue per line is computed pursuant to § 61.3 (zz).

(7) Minimum Charge. Except where an incumbent LEC chooses to lower the deaveraged End User Common Line Charge through voluntary reductions, the minimum zone deaveraged End User Common Line Charge in any zone in a study area is at least the Minimum EUCL. Minimum EUCL is Zone Average Revenue Per Line for the zone with the lowest Zone Average Revenue Per Line in that study area plus an amount per line calculated to recover the difference between Interstate Access USF Support Per Line (as defined in § 54.807) multiplied by base period lines for the applicable customer class and zones receiving such support and Study Area Above Benchmark Revenues, first from Zone 1 until the End User Common Line Charges in Zone 1 equal to the End User Common Line Charges in Zone 2, and then from lines in Zones 1 and 2 equally until the End User Common Line Charges in those Zones reach Zone 3 (with all End User Common Line Charges subject to the applicable residential and multi-line business lines nominal caps).

(i) For the purposes of this Part, "Study Area Above Benchmark Revenues is the sum of all Zone Above Benchmark Revenues.

(ii) For the purposes of this Part, "Zone Above Benchmark Revenues" is calculated as follows:

Zone Above Benchmark Revenues is the sum of Zone Above Benchmark $\text{Revenues}_{\text{Residence\&SingleLineBusiness}}$ and Zone Above Benchmark $\text{Revenues}_{\text{Multi-lineBusiness.}}$ Zone Above Benchmark $\text{Revenues}_{\text{Residence\&SingleLineBusiness}}$ is, within each zone, the product of Zone Average Revenue Per Line minus $7.00 multiplied by all ILEC Base Period Lines $_{\text{Residence and Single Line Business}}$ times 12. If negative, the Zone Above Benchmark $\text{Revenues}_{\text{Residence\&SingleLineBusiness}}$ for the zone is zero. Zone Above Benchmark $\text{Revenues}_{\text{Multi-lineBusiness}}$ is, within each zone, the product of Zone Average Revenue Per Line minus $9.20 multiplied by all ILEC zone Base Period $_{\text{multi-line business}}$ lines times 12. If negative, the Zone Above Benchmark $\text{Revenues}_{\text{Multi-lineBusiness}}$ for the zone is zero.

(8) Voluntary Reductions. A "Voluntary Reduction" is one in which the ILEC reduces prices other than through offset of net increases in End User Common Line charge revenues or Interstate Access USF support received pursuant to § 54.807, or through increases in other zone deaveraged End User Common Line charges.

§ 69.153 Presubscribed interexchange carrier charge (PICC).

(a) A charge expressed in dollars and cents per line may be assessed upon the Multi-line business subscriber's presubscribed interexchange carrier to recover revenues totaling Average Price Cap CMT Revenues Per Line times the number of base period lines less revenues recovered through the End User Common Line charge established under § 69.152 and Interstate Access USF

Support Per Line (as defined in § 54.807) multiplied by base period lines for the applicable customer class and zones receiving such support, up to a maximum of $4.31 per line per month. In the event the ceilings on the PICC prevent the PICC from recovering all the residual common line/marketing and residual interconnection charge revenues, the PICC shall recover all residual common line/marketing revenues before it recovers residual interconnection charge revenues.

(b) If an end-user customer does not have a presubscribed interexchange carrier, the local exchange carrier may collect the PICC directly from the end user.

(c) [Removed and Reserved]

(d) Local exchange carriers shall assess no more than five PICCs as calculated under paragraph (a) of this section for Primary Rate Interface ISDN service.

(e) The maximum monthly PICC for Centrex lines shall be one-ninth of the maximum charge determined under paragraph (a) of this section, except that if a Centrex customer has fewer than nine lines, the maximum monthly PICC for those lines shall be the maximum charge determined under paragraph (a) of this section divided by the customer's number of Centrex lines.

§ 69.154 Per-minute carrier common line charge. [Effective Jan. 1, 1998.]

[PUBLISHER'S NOTE: This section was added at 62 FR 31868, 31937, June 11, 1997, effective Jan. 1, 1998.]

(a) Local exchange carriers may recover a per-minute carrier common line charge from interexchange carriers, collected on originating access minutes and calculated using the weighting method set forth in paragraph (c) of this section. The maximum such charge shall be the lower of:

(1) The per-minute rate using base period demand that would recover the maximum allowable carrier common line revenue as defined in § 61.46(d); or

(2) The sum of the local switching, carrier common line and interconnection charge charges assessed on originating minutes on December 31, 1997, minus the local switching charges assessed on originating minutes.

(b) To the extent that paragraph (a) of this section does not recover from interexchange carriers all permitted carrier common line revenue, the excess may be collected through a per-minute charge on terminating access calculated using the weighting method set forth in paragraph (c) of this section.

(c) For each Carrier Common Line access element tariff, the premium originating Carrier Common Line charge shall be set at a level that recovers revenues allowed under paragraphs (a) and (b) of this section. The non-premium charges shall be equal to .45 multiplied by the premium charges.

§ 69.155 Per-minute residual interconnection charge. [Effective Jan. 1, 1998.]

[PUBLISHER'S NOTE: This section was added at 62 FR 31868, 31938, June 11, 1997, effective Jan. 1, 1998. 62 FR 56121, 56133, Oct. 29, 1997, revised paragraph (c), effective Jan. 1, 1998.]

(a) Local exchange carriers may recover a per-minute residual interconnection charge on originating access. The maximum such charge shall be the lower of:

(1) The per-minute rate that would recover the total annual residual interconnection charge revenues permitted less the portion of the residual interconnection charge allowed to be recovered under § 69.153; or

(2) The sum of the local switching, carrier common line and residual interconnection charges assessed on originating minutes on December 31, 1997, minus the local switching charges assessed on originating minutes, less the maximum amount allowed to be recovered under § 69.154(a).

(b) To the extent that paragraph (a) of this section prohibits a local exchange carrier from recovering all of the residual interconnection charge revenues permitted, the residual may be collected through a per-minute charge on terminating access.

(c)(1) No portion of the charge assessed pursuant to paragraphs (a) or (b) of this section that recovers revenues that the local exchange carrier anticipates will be reassigned to other, facilities-based rate elements, including the tandem-switching rate element described in § 69.111(g), the three-part tandem switched transport rate structure described in § 69.111(a)(2), and port and multiplexer charges described in § 69.111(l), shall be assessed upon minutes utilizing the local exchange carrier's local switching facilities, but not the local exchange carrier's transport service.

(2) If a local exchange carrier cannot recover its full residual interconnection charge revenues through the PICC mechanism established in § 69.153, and will consequently recover a portion of its residual interconnection charge revenues through per-minute charges assessed pursuant to paragraphs (a) and (b) of this section, then the local exchange carrier must allocate its residual interconnection charge revenues subject to the exemption established in paragraph (c)(1) of this section between the PICC and the per-minute residual interconnection charge in the same proportion as other residual interconnection charge revenues are allocated between these two recovery mechanisms.

§ 69.156 Marketing expenses.

Effective July 1, 2000, the marketing expenses formerly allocated to the common line and traffic sensitive baskets, and the switched services within the trunking basket pursuant to §§ 32.6610 of this chapter and 69.403 will now be recovered in the CMT basket created pursuant to §61.42(d)(1). These marketing expenses will be recovered through the elements outlined in §§ 69.152, 69.153 and 69.154.

§ 69.157 Line port costs in excess of basic, analog service. [Effective Jan. 1, 1998.]

[PUBLISHER'S NOTE: This section was added at 62 FR 31868, 31938, June 11, 1997, effective Jan. 1, 1998.]

To the extent that the costs of ISDN line ports, and line ports associated with other services, exceed the costs of a line port used for basic, analog service, local exchange carriers may recover the difference through a separate monthly end user charge. As of June 30, 2000, these rates will be capped until June 30, 2005.

§ 69.158 Universal Service End User Charges

To the extent the company makes contributions to the Universal Service Support Mechanisms pursuant to § 54.706 and § 54.709 and the ILEC seeks to recover some or all of the amount of such contribution, the ILEC shall recover those contributions through a charge to end users other than Lifeline users. These contributions are not a part of any price cap baskets, and the charge to recover these contributions is not part of any other element established pursuant to Part 69. Such a charge may be assessed on a per line basis or as a percentage of interstate retail revenues, and at the option of the ILEC it may be combined for billing purposes with other end user retail rate elements. An ILEC opting to assess the USF end user rate element on a per line basis may apply that charge using the "equivalency" relationships established for the multi-line business PICC for Primary Rate ISDN service, as per § 69.153(d), and for Centrex lines, per § 69.153(e).

§§ 69.201-69.205 [Removed]

§ 69.206 [Deleted]

§ 69.207 [Deleted]

§ 69.208 [Deleted]

§ 69.209 [Deleted]

APPENDIX C

Graph 1

Total Access Revenue for Price Cap Carriers *

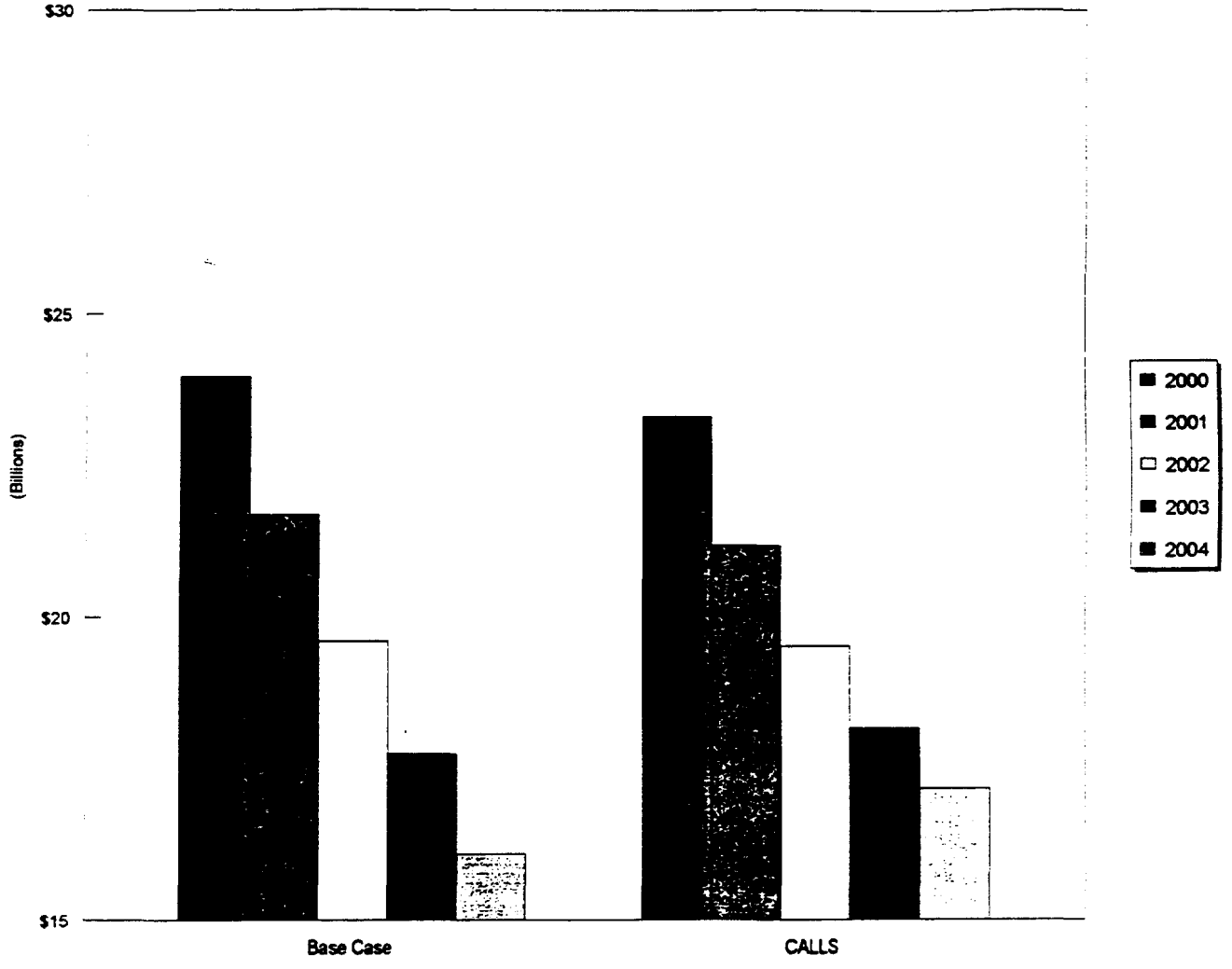
Graph 1

Discounted Present Values **

	July 2000 to June 2001 (billions)	July 2001 to June 2002 (billions)	July 2002 to June 2003 (billions)	July 2003 to June 2004 (billions)	July 2004 to June 2005 (billions)	Total Present Value
Base Case	$24.0	$21.7	$19.6	$17.8	$16.1	$99.1
CALLS	$23.3	$21.2	$19.5	$18.2	$17.2	$99.4

* CALLS reflects the most recent plan submitted by the CALLS Coalition. The CALLS totals include the proposed Access-USF payments, at $650 million per year. Base Case reflects existing rules and assumes that the X factor remains at 6.5% and is not targeted. In both plans, flowback is removed on July 1, 2000 and elasticity of demand effects are included. All figures assume that no LEC qualifies for exogenous rate increases that can occur when the interstate rate of return falls below 10.25%.

** Figures shown discounted to July 1, 2000 with an annual discount rate of 11.25%.



prepared by IAD

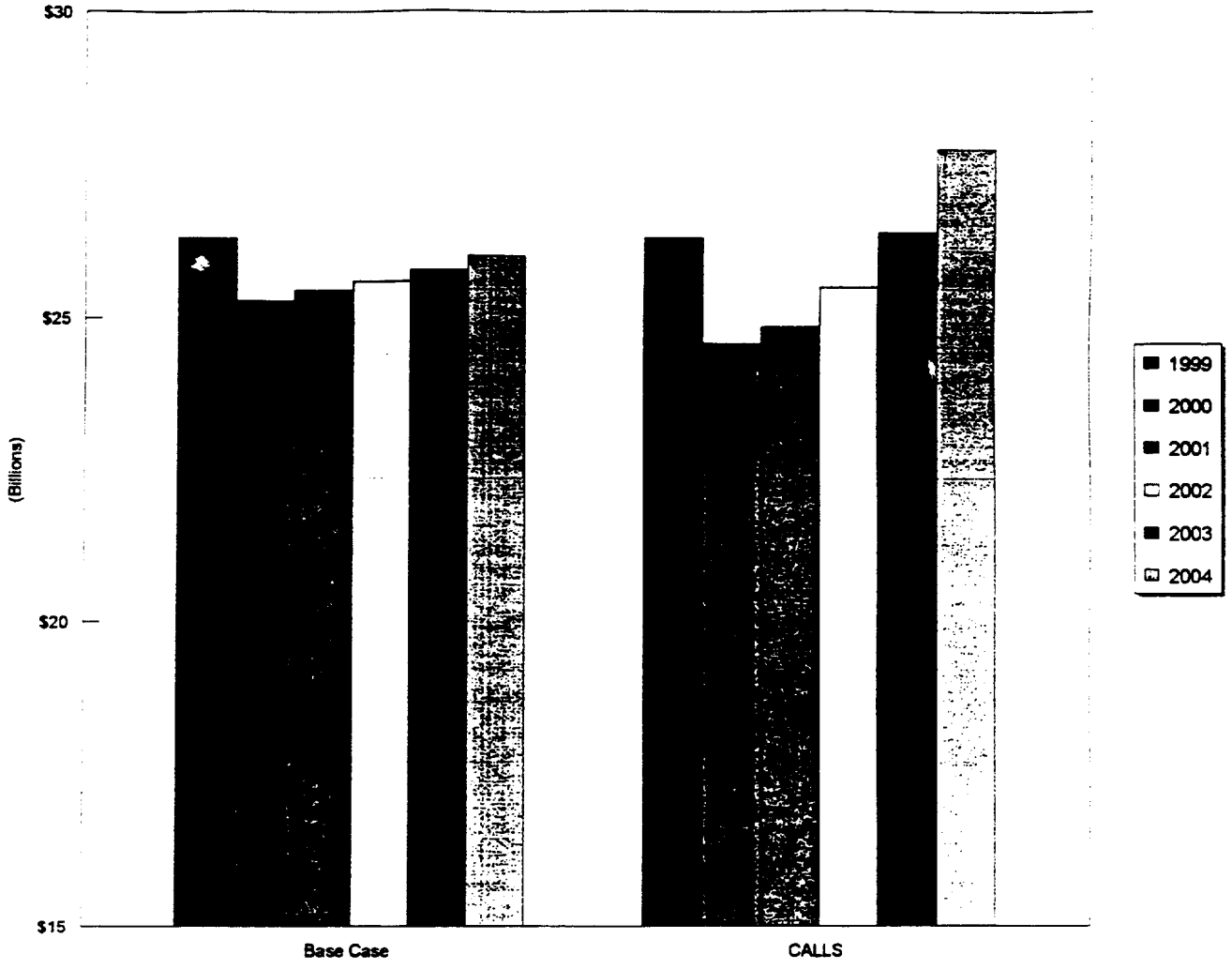
Graph 2

Total Access Revenue for Price Cap Carriers

Graph 2

	July 1999 to June 2000 (billions) $26.3	July 2000 to June 2001 (billions)	July 2001 to June 2002 (billions)	July 2002 to June 2003 (billions)	July 2003 to June 2004 (billions)	July 2004 to June 2005 (billions)	Total
Base Case		$25.3	$25.4	$25.6	$25.8	$26.0	$128.1
CALLS		$24.6	$24.8	$25.5	$26.4	$27.7	$129.1

* CALLS reflects the most recent plan submitted by the CALLS Coalition. The CALLS totals include the proposed Access-USF payments, at $650 million per year. Base Case reflects existing rules and assumes that the X factor remains at 6.5% and is not targeted. In both plans, flowback is removed on July 1, 2000 and elasticity of demand effects are included. All figures assume that no LEC qualifies for exogenous rate increases that can occur when the interstate rate of return falls below 10.25%.



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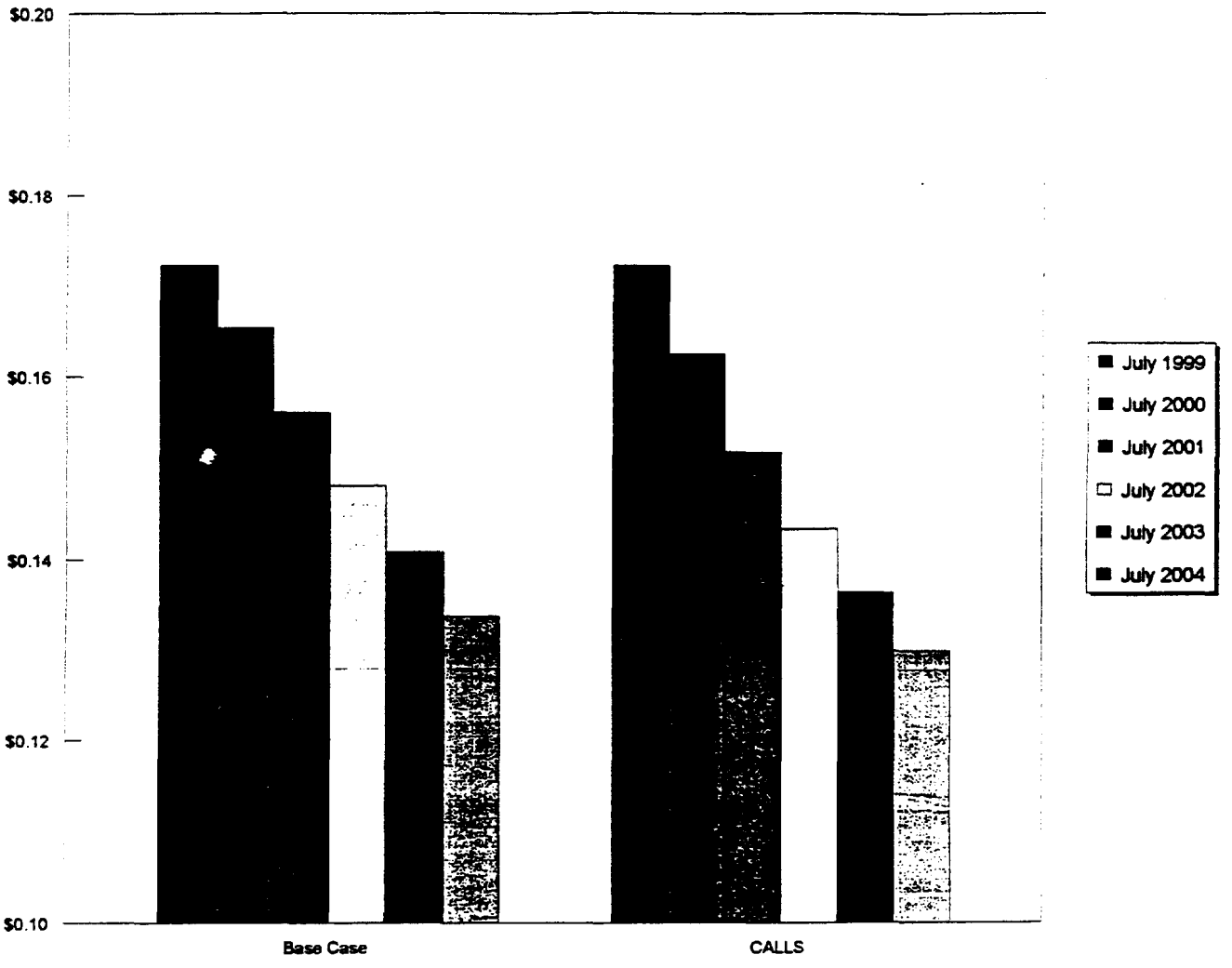
Graph 3

Toll Prices Per Minute * for Residential Customers

Graph 3

Plan	July 1999 $0.172	July 2000	July 2001	July 2002	July 2003	July 2004
Base Case		$0.165	$0.156	$0.148	$0.141	$0.134
CALLS		$0.163	$0.152	$0.143	$0.136	$0.130

* The amounts shown represent average revenue per minute, including all IXC charges except PICC pass-through and USF surcharges.



prepared by IAD

APPENDIX C
CHART 1

SLC and PICC Caps under current access rules (assumes 2% inflation)

	Current	7/2000	7/2001	7/2002	7/2003	7/2004
Primary Residential						
SLC	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50
PICC	$1.04	$1.56	$2.09	$2.63	$3.18	$3.74
Non-Primary Residential						
SLC	$6.07	$7.19	$8.33	$9.51	$9.96	$10.16
PICC	$2.53	$3.58	$4.65	$5.74	$6.86	$8.00
Multi-line Business						
SLC	$9.20	$9.38	$9.57	$9.76	$9.96	$10.16
PICC	$4.31	$5.90	$7.52	$9.17	$10.85	$11.57

SLC and PICC Caps under CALLS (assumes 2% inflation)

Primary Residential						
SLC	$3.50	$4.35	$5.00	$6.00	$6.50	$6.50
PICC	$1.04	0	0	0	0	0
Non-Primary Residential						
SLC	$6.07	$7.00	$7.00	$7.00	$7.00	$7.00
PICC	$2.53	0	0	0	0	0
Multi-line Business						
SLC	$9.20	$9.20	$9.20	$9.20	$9.20	$9.20
PICC	$4.31	$4.31	$4.31	$4.31	$4.31	$4.31

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EX PARTE OR LATE FILED
APPENDIX D

Joel E. Lubin
Federal Government Affairs
Vice President

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Washington, DC 20036
202 457-3838
FAX 202 263-2645
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March 30, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St., SW, Room TWB-204
Washington, DC 20554

Re:	CC Docket 94-1	Price Cap Performance Review
	CC Docket 96-45	Universal Service
	CC Docket 99-249	Low-Volume Long Distance Users
	CC Docket 96-262	Access Charge Reform

Dear Ms. Salas:

In a February 25, 2000 *ex parte* submission filed in the referenced proceedings, I wrote that, subject to the conditions and understandings specified in that *ex parte* submission, AT&T would take certain steps to ensure that consumers benefit from the reforms described in that submission. Some concerns have been expressed relating to these commitments. This letter addresses those concerns by clarifying and modifying the steps that AT&T will take if appropriate reforms are implemented. This letter replaces the set of commitments specified in AT&T's February 25, 2000 *ex parte* submission.

On the condition and understanding that the Commission will provide at least $2.1 billion in usage-sensitive interstate access charge reductions (as calculated in the analyses underlying the plan proposed by the Coalition for Affordable Local and Long Distance Services ("CALLS") and submitted to the Commission) and eliminate the residential and single-line business presubscribed interexchange carrier charge ("PICC") no later than July 1, 2000, and provided further that interexchange carriers obtain the other benefits specified in the CALLS plan, as modified by CALLS' February 25, 2000 *ex parte* submission, AT&T will take the following steps to ensure that consumers benefit from these critical changes.

First, no later than July 1, 2000, AT&T will eliminate the minimum usage requirement on its residential interstate Basic Schedule for 5 years, although AT&T

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reserves the right to work with the Commission to revise or eliminate this commitment after 3 years if market circumstances warrant.

Second, no later than July 1, 2000, AT&T will modify its residential domestic interstate Basic Schedule usage rates in conjunction with elimination of the minimum usage requirement, and once it establishes those rates, will not increase those rates for 1 year. In addition, AT&T will notify every residential interstate Basic Schedule customer that these changes are taking place and advise those customers of other AT&T calling plans, including but not limited to the AT&T One Rate Basic plan, that may better serve an individual customer's needs.

Third, AT&T will maintain the AT&T One Rate Basic plan rate of 19¢ per minute at all times for domestic interstate calls from home, with no monthly recurring charge and no minimum usage requirement, for 1 year from the date it establishes revised Basic Schedule rates. If this plan is successful, AT&T will offer during the five-year life of the CALLS plan a calling plan with a single per-minute rate for domestic interstate calls from home, with no monthly recurring charge, and with no minimum usage requirement.

Fourth, when the residential and single-line business PICCs are eliminated as charges assessed to interexchange carriers, AT&T will eliminate the Carrier Line Charge, which is its PICC recovery mechanism, for these long distance customers.

Fifth, to the extent that AT&T realizes reductions in its access costs as a result of the reforms described above, it will, over the life of the plan, flow those savings through to residential and business customers.

Eight copies of this Notice are being submitted in accordance with Section 1.1206 of the Commission's rules.

Very truly yours,

Joel E. Lubin

cc: K. Brown

Sprint

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EX PARTE PRESENTATION

February 25, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket Nos. 96-262, 94-1, 96-45, 99-249

Dear Ms. Salas:

In the event the Commission adopts the access reform plan previously submitted by the Coalition for Affordable Local and Long Distance Service ("CALLS"), together with the modifications submitted by CALLS today, without any further changes, Sprint Communications Co. L.P. ("Sprint") commits to the following:

(1) At such time as the incumbent local exchange carriers eliminate the presubscribed interexchange carrier charge on lines for residential and single-line business customers, Sprint will eliminate its Presubscribed Line Charge for residential and single-line business customers.

(2) Sprint will not impose a minimum usage charge ("MUC") on at least one basic rate plan for the duration of the CALLS plan,[1] provided that if any other interexchange carrier that is now or hereafter a party to the CALLS plan reserves the right to impose a MUC on its basic rate plan prior to the termination of the CALLS plan, Sprint reserves the right to do so as well under similar terms and circumstances.

(3) Sprint will not increase the per-minute usage rates on domestic interstate 1+ calls on its Sprint Standard Weekend plan from July 1, 2000 through July 1, 2001.

[1] For at least the period July 1, 2000 through July 1, 2001, the Sprint Standard Weekend plan will be its basic plan for purposes of this commitment.

(4) Sprint will send a communication to all its residential customers who are not presently on the Sprint Standard Weekend Plan by July 1, 2000 or as soon as practicable thereafter, informing them, at a minimum, of the Sprint Standard Weekend plan and instructing them how to select that plan (or any other plan also described in the communication).

(5) To the extent Sprint realizes a reduction in access costs from the CALLS plan, Sprint will flow through those savings over the life of the plan to both residential and business customers.

This letter is being filed electronically.

Sincerely,

cc: Lawrence Strickling (via fax)

APPENDIX E
CALLS *Ex Parte* Filings
Modifying the CALLS Proposal

- Letter from John T. Nakahata, Counsel to CALLS, to Magalie Roman Salas, Secretary, FCC, February 25, 2000.
- Letter from Joel E. Lubin, Vice President, Federal Government Affairs, AT&T, to Magalie Roman Salas, Secretary, FCC, February 25, 2000 (*AT&T February 25 Letter*).
- Letter from Richard Juhnke, General Attorney, Sprint, to Magalie Roman Salas, Secretary, FCC, February 25, 2000 (*Sprint February 25 Letter*).
- Letter from Kathleen M. H. Wallman, Wallman Strategic Consulting, L.L.C., to Magalie Roman Salas, Secretary, FCC, March 30, 2000 (*Wallman March 30 Letter*).
- Letter from Joel E. Lubin, Vice President, Federal Government Affairs, AT&T, to Magalie Roman Salas, Secretary, FCC, March 30, 2000 (*AT&T March 30 Letter*).
- Letter from John T. Nakahata, Counsel to CALLS, to Magalie Roman Salas, Secretary, FCC, April 7, 2000.
- Letter from John T. Nakahata, Counsel to CALLS, to Richard Lerner, Deputy Chief, Competitive Pricing Division, Common Carrier Bureau, FCC, April 14, 2000.
- Letter from John T. Nakahata, Counsel to CALLS, to Magalie Roman Salas, Secretary, FCC, April 14, 2000 (*VALOR April 14 Letter*).
- Letter from John T. Nakahata, Counsel to CALLS, to Magalie Roman Salas, Secretary, FCC, April 24, 2000.
- Letter from John T. Nakahata, Counsel to CALLS, to Magalie Roman Salas, Secretary, FCC, April 28, 2000 (*CALLS April 28 Letter*).
- Letter from John T. Nakahata, Counsel to CALLS, to Magalie Roman Salas, May 2, 2000.
- Letter from John T. Nakahata, Counsel to CALLS, to Jack Zinman, Legal Counsel, Common Carrier Bureau, FCC, May 22, 2000.
- Letter from John T .Nakahata, Counsel to CALLS, to Magalie R. Salas, Secretary, FCC, May 25, 2000.
- Letter from John T. Nakahata, to Jack Zinman, Legal Counsel, Common Carrier Bureau, FCC, May 25, 2000.

STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH, CONCURRING IN PART AND DISSENTING IN PART

Re: Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, Report and Order, CC Docket Nos. 96-262, 94-1, 99-249, 96-45.

The current structure of interstate access charges is irrational, and substantial revision of the Commission's access charge rules is needed. At present, the price of access to the local exchange carriers' networks bears very little relation to the way in which the costs of access are actually incurred – per-minute charges for access are far higher than they should be, whereas fixed charges are artificially low. As substitutes for traditional circuit-switched long-distance services, such as packet-switched Internet-based telephony, become more widely available, the regulatory distortions created by the Commission's rules are increasingly untenable.

Today's restructure of the access charge regime takes some steps in the right direction, and I concur in those aspects of this decision that permit price-cap local exchange carriers more fully to recover the fixed costs of the local loop through flat-rated charges. Indeed, I would have moved even more aggressively in this regard. I write separately, however, to express my profound disagreement with three aspects of this order.

The Process Through Which this Order Was Adopted Was Fundamentally Defective. This order is a product of a proposal that was originally submitted last summer by the Coalition for Affordable Local and Long Distance Service ("CALLS"). The Commission sought comment on this proposal last fall. *See* Notice of Proposed Rulemaking, *Access Charge Reform, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, CC Docket Nos. 92-262, 94-1, 99-249, 96-45 (Sept. 15, 1999).

In ordinary circumstances, the Commission would simply have rendered a decision on the CALLS proposal based on comments submitted by interested parties. The course the Commission took here, however, was very different. In the early part of this year, apparently prompted by objections to the original CALLS proposal raised by groups purporting to represent consumer interests, the Commission, acting chiefly through the Common Carrier Bureau, held a series of meetings with a select group of some – but by no means all – of the parties with interests in this proceeding. The substance of what was discussed at these meetings was not publicly disclosed. And a number of parties with interests in the outcome of this proceeding, including the Ad Hoc Telecommunications Users Committee, Time Warner Telecom, and the Association for Local Telecommunications Services, were not allowed to participate.

The Commission evidently refereed the negotiations at these meetings, and a "modified" CALLS proposal was reached near the end of February. Although this order announces that this "modified proposal" was put forth by members of the Coalition, *see* Order ¶ 1, it is undeniable that the proposal was a product of the negotiations that took place between the Commission and those parties that were allowed to participate in the negotiations – that is, members of the Coalition and some groups that purport to represent the interests of residential and small-business consumers. The Coalition's "modified proposal" simply memorialized aspects of the agreement that was reached between these parties and the Commission in the course of the meetings held in January and February of this year.

Even more dismaying, however, is what the "modified proposal" does not disclose. At some point in the course of the CALLS negotiations, proceedings that were unrelated to the issue of access charge reform became part of the negotiations. Incumbent local exchange carrier members of the Coalition apparently contended that they could not commit to certain modifications of the CALLS proposal unless they had confidence that two separate matters – a depreciation waiver item[1] and the pending special access proceeding, which concerns the circumstances in which carriers may purchase combinations of unbundled loops and transport network elements[2] – would be resolved favorably to them. As a consequence, part of the final agreement reached by the participants to the CALLS negotiations concerned these two separate matters. With respect to this depreciation item, the Bureau agreed to recommend to the Commission that it approve the waiver that is the subject of this Notice and terminate the CPR audits. Additionally, the Bureau agreed to recommend to the Commission that it "clarify" the existing rules regarding special access and defer further rulemaking until 2001. The linkage between these unrelated items and the CALLS docket was very clear – at least internally. To brief the Commissioners and their staff regarding the outcome of the CALLS negotiations, the Bureau distributed briefing sheets outlining the incumbent carriers' concerns and making plain that the depreciation and special access matters had become a key part of the CALLS package. Nothing in this order, however, tells the public of this connection between this order and these other dockets.

In my view, the process by which the original CALLS proposal was modified is fundamentally inconsistent with principles of neutrality and transparency that must govern agency decisionmaking. By participating in the CALLS negotiations, the Commission plainly reached a view as to how the CALLS proceeding should be

[1] *See* Further Notice of Proposed Rulemaking, *1998 Biennial Regulatory Review -- Review Of Depreciation Requirements For Incumbent Local Exchange Carriers, Ameritech Corporation Telephone Operating Companies' Continuing Property Records Audit, et al.*, CC Docket Nos. 98-137, 99-117 (Rel. Apr. 3, 2000).

[2] *See, e.g.*, Supplemental Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98 (rel. Nov. 24, 1999).

resolved, and its review of the comments it subsequently received regarding the "modified proposal" could not have been uninfluenced by the role it had played earlier. In addition, it was entirely improper for the Commission to have permitted the unrelated matters of depreciation and special access become part of the negotiations.

If the Bureau thought it would be helpful to narrow the differences between the various parties with interests in this docket in advance of a formal rulemaking proceeding, it could legally have done so by following the framework set forth in the Negotiated Rulemaking Act, 5 U.S.C. § 561 *et seq.* This statute provides for the formation of a committee that will, with the assistance of the relevant agency, negotiate to reach a consensus on a given issue. 5 U.S.C. § 563. An agency that undertakes a negotiated rulemaking must publish in the Federal Register a notice that, among other things, (1) announces the establishment of the committee; (2) describes the issues and scope of the rule to be developed; and (3) proposes a list of persons that will participate on the committee. 5 U.S.C. § 564(a). In addition, the agency must give persons with interests that will be affected by the new rule an opportunity to apply to participate in the negotiated rulemaking process. *Id.* § 564(b). If the committee reaches a consensus, the statute requires it to transmit to the agency that established the committee a report on a proposed rule. *Id.* § 566(f). Significantly, although the agency may nominate a federal employee to facilitate the committee's negotiations, "[a] person designated to represent the agency in substantive issues *may not* serve as facilitator or otherwise chair the committee." *Id.* § 566(c) (emphasis added).

None of those procedures was followed here. The public generally was not notified that the CALLS negotiations were taking place, nor were a number of parties that wished to be included in these negotiations permitted to participate. Not surprisingly, the final CALLS deal does not reflect the views of parties that were not included in the CALLS negotiations, such as the Ad Hoc Telecommunications Users Committee. For example, Ad Hoc has pointed out, in its comments and in a series of *ex parte* presentations to the Commission, that the retention of the multi-line business presubcribed interexchange carrier charge (or "PICC") imposes substantial costs on multi-line business consumers. *See, e.g.*, Letter from James S. Blasak to Harold Furchtgott-Roth (May 23, 2000). Ad Hoc contended that the multi-line business PICC is often marked up by long-distance carriers, with the result that business subscribers pay more than they otherwise would. It therefore proposed that the multi-line business PICC be consolidated with the multi-line business subscriber line charge (or "SLC") and billed directly from the price-cap LEC to the end-user, to avoid a mark-up by the interexchange carrier. *See* Order ¶¶ 105-110. Elimination of the multi-line business PICC would have been consistent with the approach the Commission took with respect to the residential and single-line PICC. (Notably, groups purporting to represent the interests of residential and small-business consumers *were* at the table when the CALLS negotiations were held.) But the order declines to take Ad Hoc's approach. Had this

party been permitted to present its views in the context of a negotiated rulemaking, I think the treatment of the multi-line business PICC might well have been different. And other aspects of this order would have been different as well.

Not only were interested parties excluded from the CALLS negotiations, but also the substance and scope of the CALLS negotiations was not made public, and there is no public record describing whatever consensus was finally reached. And, inconsistent with the policy set forth in 5 U.S.C. § 566(c), the Bureau participated in these negotiations both substantively *and* as a facilitator. Had the Commission adhered to the statutory requirements set forth in the Negotiated Rulemaking Act, I believe it could have accomplished its goal of reforming the current access charge regime in a way that preserved its neutrality, allowed representatives of *all* interested parties to participate, and kept the public informed about the process taking place.[3]

To be clear, I do not believe that any employee of this agency acted in bad faith, nor do I call into question the propriety of public participation in the Commission's decisionmaking process by making *ex parte* presentations. In addition, I believe that the inefficiencies of the current access charge regime should be eliminated. But I cannot escape the conclusion that the process by which this Notice has been promulgated falls short of certain fundamental principles that govern the behavior of administrative agencies.

The Universal Service Subsidy Created in this Order Is Illegitimate. This order establishes a new $650 million fund universal service subsidy mechanism, which will be paid from contributions made by *all* interstate carriers almost exclusively to price-cap local exchange carriers. The Commission claims that this new subsidy is needed to replace the implicit "universal service" support mechanism currently present in interstate access charges.

It is important to understand what is occurring with the creation of this new subsidy. Until now, it has been interexchange carriers that have paid to local exchange carriers whatever "implicit subsidy" exists in access charges, and local exchange carriers have used this money to subsidize the cost of providing certain types of services within a limited geographical area (typically within a state). Thus, money might flow from a business end-user to a residential user, both within the incumbent's territory. Under this new mechanism, however, *all* carriers that provide interstate services will fund the access subsidy, and the costs of the subsidy will be spread nationwide. Thus, a wireless carrier in California (which is not eligible to receive any support from the $650 million

[3] Even under the Negotiated Rulemaking Act, however, the Bureau could not have promised that this Commission would abide by the negotiated rulemaking committee's consensus. *See USA Group Loan Servs. Inc. v. Riley*, 82 F.3d 708, 714 (7th Cir. 1996).

fund) will now find itself footing the bill to subsidize local exchange carriers nationwide.

I do not think that the creation of this new fund is consistent with the statute's directive that the Commission "preserve and advance" universal service support mechanisms. *See* 47 U.S.C. §254. In my view, the subsidies present in the existing access charge regime do not come within the scope of section 254, and the Commission's reliance on section 254 as a basis for creating this new fund is inconsistent with the statute. Moreover, the only economically rational way for local exchange carriers to recover whatever subsidies are currently included in access charges is to increase the flat fees that subscribers pay for access. Paradoxically, this order decreases those charges. Although consumers may pay less in flat charges in the short term, I believe that this order does them a great disservice, since they will ultimately wind up paying far more to fund the subsidies that this Commission continues to manufacture in the name of "universal service."

The Commission's Requirement that Sprint and AT&T Comply with the Commitments these Companies Made in Letters to the Commission Is Unenforceable. In various letters to the Commission, Sprint and AT&T have made "commitments" regarding the CALLS proposal. Among other things, these companies have said they will "pass through" to consumers the savings that they realize in access charge reductions and that they will make various rate plans available to different types of consumers. The Commission orders Sprint and AT&T to comply with all the supposedly "voluntary" commitments they have made in these letters. *See* Order ¶ 247.

In my view, the Commission lacks the power to regulate AT&T's and Sprint's rates in this manner. As the Commission recognized in 1996, the long-distance market is a competitive one, and the Commission therefore no longer regulates the rates of any long-distance carrier. Order, *Motion of AT&T To Be Classified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1996). In a competitive market, it is consumers – through their buying power – who tell carriers whether their rates are reasonable or not. Government regulation is no longer warranted. I therefore do not see how, even if these carriers fail to live up to their "commitment" letters, the Commission could possibly find these carriers' rates "unjust" or "unreasonable."